

MITIGATION PROJECT ~~AGREEMENT~~ MEMORANDUM OF UNDERSTANDING

THIS MITIGATION PROJECT ~~AGREEMENT~~ PROJECT MEMORANDUM OF UNDERSTANDING (“~~Agreement~~ Memorandum”) is made and entered into this ____ day of December, 2017, by and between the **STATE OF NORTH CAROLINA** and **ATLANTIC COAST PIPELINE, LLC**, a Delaware limited liability company of 120 Tredegar Street, Richmond, Virginia 23219 (“Atlantic”).

WITNESSETH:

WHEREAS, Atlantic is proposing to construct the Atlantic Coast Pipeline (“ACP”), an underground natural gas transmission pipeline of approximately 600 miles from West Virginia, through Virginia, and ending in into North Carolina; and

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WHEREAS, the ACP will deliver up to 1.5 billion cubic feet per day of natural gas to meet the demand for electric-generation electricity, natural gas distribution, and end use markets in North Carolina and Virginia; and

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WHEREAS, the ACP will serve as a catalyst for economic development in North Carolina; and

WHEREAS, the ACP route was approved by the Federal Energy Regulatory Commission (“FERC”) on October 13, 2017, and will traverse eight counties in the State of North Carolina, and will include a natural gas compressor station in Northampton County and other related facilities along the route; and

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WHEREAS, the pipeline ACP, access roads, and all associated aboveground facilities and contractor yards will result in total direct impacts of over 3,000 acres from during construction activities and a significantly reduced impacts during operation; and

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WHEREAS, while the ACP has been routed to minimize disruptions to migratory birds and federally listed species by avoiding preferred habitats, including wetland areas, waterbodies and associated riparian vegetation to the fullest extent practicable, there remain unavoidable impacts to over 300 acres to of interior forest habitats; and

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WHEREAS, the ACP route and access roads would cross approximately 320 waterbodies in North Carolina; and

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WHEREAS, Atlantic has conducted numerous open houses, participated in many public meetings held by FERC and the North Carolina Department of Environmental Quality, and held individual information sessions with local governments, state-recognized Indian tribes, and other stakeholders along the route; and

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WHEREAS, Atlantic recognizes that construction of the ACP and maintenance of the permanent right-of-way for the ACP may result in temporary and/or permanent impacts to the habitats upon which interior forest wildlife species depend; and

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WHEREAS, Atlantic understands that local communities, existing populations, and state-recognized Indian tribes have a significant interest in preserving their traditions, lifestyles, and quality of life; and

WHEREAS, Atlantic represents that it has taken and will take ~~desires to take~~ all reasonable measures to comply with North Carolina natural resources laws and to provide for the restoration and preservation of ~~North Carolina habitats for~~ interior forest wildlife ~~habitats in North Carolina~~ where the ACP will be constructed, operated, and maintained; and, ~~the Director of the North Carolina Wildlife Resources Commission has authority and responsibility under NCGS Section 113-306(a) to act in the overall best interests of the conservation of wildlife resources to accept gifts and grants on behalf of the State;~~

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State of North Carolina and Atlantic (together, the "Parties") agree ~~endeavor to do as follows~~ the following:

- 1) Atlantic ~~agrees to~~ commits to ~~provide~~ providing mitigation funding in the amount of \$575,000,000 to the State of North Carolina ("the Mitigation Funding") no later than ~~before the date the ACP is placed in service~~ the completion of state permitting for the ACP. ~~Such funding~~ The Mitigation Funding will be deposited in an escrow fund designated by a third party selected by the Governor of the State of North Carolina ("the Escrow Fund"). The Mitigation Funding ~~is being provided as (1) required~~ mitigation for the unavoidable effects of the ACP on the interior forest habitat, open-space lands, waterbodies, and natural resources of the communities along the ACP's route and (2) support and funding for economic development in the counties that would be impacted by the ACP. [] of the \$75,000,000 will be deposited in the Escrow Fund and made available for disbursement for environmental mitigation immediately following the issuance of the Executive Order identified in Paragraph 2 of this Memorandum.
- 2) The State of North Carolina acknowledges that the ~~mitigation~~ Mitigation funding Funding is being provided, among other things, for the purpose ~~sufficiently addresses~~ of addressing the effects on the landscape, natural resources, interior forest habitat, agricultural lands and lifestyles of the communities caused by the ~~pipeline~~ ACP, access roads and all associated aboveground facilities and contractor yards as described in the FERC Environmental Impact Statement ~~and any changes thereto subsequently approved by FERC~~. The ~~funding provided~~ Mitigation Funding shall be allocated pursuant to the guidelines and directives set forth in a subsequent Executive Order that would be issued prior to the completion of state permitting for the ACP, at the State's discretion to mitigate these effects by supporting programs and projects that enhance the well-being of the affected areas and resources. ~~Nothing in this Memorandum shall be construed as precluding or otherwise barring the State of North Carolina from recovering damages from Atlantic for spills or leaks stemming from the ACP.~~

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Comment [MM1]: I would propose deleting this section for the reasons discussed and having this document be signed by someone else

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- 3) Nothing in this Agreement-Memorandum shall be construed as affecting the authorities of any party or as binding them beyond their respective authorities or responsibilities.
- 4) The Agreement-Memorandum does not create any right of action for a third party and may not be the basis of any third-party challenges or appeals. Nothing in this Memorandum shall be construed as precluding or otherwise barring independent, third-party claims regarding the ACP.

[SIGNATURE BLOCKS FOR STATE OF NORTH CAROLINA AND ATLANTIC]

Comment [MM2]: For the reasons discussed, I do not think it would necessarily be prudent for Director of North Carolina Wildlife Resources Commission to sign this agreement.